

REMARKS

Claims 1-22 are pending in this application. Attached hereto is a complete listing of all claims in the application, with their current status listed parenthetically. By this Response, no claims have been amended, cancelled or withdrawn.

1st Rejection Under 35 U.S.C. § 103(a)

In the Office Action, claims 1-9, 11, 15-17 and 22 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Build Your Own Arcade Controls, The Havok Systems Master, Pages 17-19.

Applicant respectfully traverses this rejection because the above reference cannot be considered as prior art for making a *prima facie* case of unpatentability for several reasons. First, the Examiner has provided several documents, as listed on the Notice of References Cited (PTO-892). The only reference bearing a 1999 date is the “U” reference: Build Your Own Arcade Controls, The Havok Systems Master, 1999, Pages 17-19. However, Applicant notes that the article itself bears no copyright or other publication information. The 1999 publication date is derived from a GOOGLE cache of the arcadecontrols.com web page. In the absence of evidence to the contrary, Applicant submits that December 31, 1999 is the publication date for this reference. In addition, pages 17-19 of this reference does not supply the teachings relied upon by the Examiner to reject Applicant’s claims.

Instead, the Examiner relies on the “W” and “X” references listed on the Notice of References Cited (PTO-892) to supply the teachings used to reject Applicant’s claims. However, these references bear no Google cache publication date, copyright notice, or other publication

information other than the 5/20/03 date on the “W” reference. This date is almost 3 years after Applicant’s July 14, 2000 priority date.

Therefore, Applicant submits that without additional proof evidencing prior publication, the “W” and “X” references cannot be used as prior art for making a case of *prima facie* unpatentability under 35 U.S.C. § 103.

In addition, attached as Exhibit A is a Declaration under 37 CFR 1.132 declaring that Christopher Gerding, the inventor of the instant application, is the inventor of the Havok System Master. The Declaration states that Christopher Gerding conceived of the invention in 1998, and reduced it to practice while exercising the requisite due diligence in his home’s private garage where, from conception in 1998 to reduction to practice in 1999, he privately constructed a experimental prototype of the invention. The invention was then displayed to the public in 1999, and on July 14, 2000, Applicant filed a provisional patent application, less than one year from the first public display of the invention.

In view of the above discussion, Applicant respectfully submits that the Section 103 rejection of claims 1-9, 11, 15-17 and 22 have been traversed.

2nd Rejection Under 35 U.S.C. § 103(a)

In the Office Action, claims 10 and 18-21 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Build Your Own Arcade Controls, The Havok Systems Master, Pages 17-19 in view of U.S. Patent 5,806,849 (“Rutkowski”).

As discussed above, the Havok reference cannot be considered as prior art for making a *prima facie* case of unpatentability. As Rutkowski fails to provide the teachings lacking in the Havok reference, Applicant respectfully traverses this rejection and respectfully requests the Examiner to reconsider and withdraw the rejection.

In view of the above discussion, Applicant respectfully submits that the Section 103 rejection of independent claim 18 has been traversed. Because claims 19-21 depend from claim 18, it is respectfully submitted that the rejection of claims 19-21 have been traversed by virtue of their dependency from claim 18. M.P.E.P. § 2143.03. For the same reasons, dependent claim 10 (that depends from independent claim 1, distinguished above) is also traversed.

3rd Rejection Under 35 U.S.C. § 103(a)

In the Office Action, claims 12 and 13 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Build Your Own Arcade Controls, The Havok Systems Master, Pages 17-19 in view of U.S. Patent 5,078,399 ("Lennon").

As discussed above, the Havok reference cannot be considered as prior art for making a *prima facie* case of unpatentability. As Lennon fails to provide the teachings lacking in the Havok reference, Applicant respectfully traverses this rejection and respectfully requests the Examiner to reconsider and withdraw the rejection of these claims

In addition, because claims 12-13 depend from claim 1, it is respectfully submitted that the rejection of claims 12-13 have been traversed by virtue of their dependency from claim 1, which has been distinguished from the cited art above. M.P.E.P. § 2143.03.

4th Rejection Under 35 U.S.C. § 103(a)

In the Office Action, claim 14 stands rejected as unpatentable under 35 U.S.C. § 103(a) over Build Your Own Arcade Controls, The Havok Systems Master, Pages 17-19 in view of U.S. Patent 5,528,566 ("McGee").

As discussed above, the Havok reference cannot be considered as prior art for making a *prima facie* case of unpatentability. As McGee fails to provide the teachings lacking in the Havok reference, Applicant respectfully traverses this rejection and respectfully requests the Examiner to reconsider and withdraw the rejection of these claims

In addition, because claim 14 depends from claim 1, it is respectfully submitted that the rejection of claim 14 have been traversed by virtue of its dependency from claim 1, which has been distinguished from the cited art above. M.P.E.P. § 2143.03.

Change of Correspondence Address

Accompanying this Response to Office Action are PTO forms SB/81 and SB/82, each designating a Change of Correspondence Address. Please change the correspondence address to:

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The attorney of record can be reached by phone at: 760.607.0844

Conclusion

Applicant believes that this Response has addressed all items in the Office Action and now places the application in condition for allowance. Accordingly, favorable reconsideration and allowance of claims 1-22 at an early date is solicited. Should any issues remain unresolved, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

October 27, 2005

Date



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